

FSM SUPREME COURT APPELLATE DIVISION

YOUNG SUN INTERNATIONAL TRADING CO., )

APPEAL CASE NO. P12-2016

Petitioner, )

vs. )

ASSOCIATE JUSTICE MAYCELEEN JD ANSON, )

Trial Division, Supreme Court of Federated )

States of Micronesia, )

Respondent, )

MWOALEN WAHU ILEILE EN POHNPEI, through )

ISO NAHNKEN NETT SALVADOR IRIARTE, )

CONSERVATION SOCIETY OF POHNPEI, )

MARCELO PETERSON, Governor of Pohnpei, )

CASIANO SHONIBER, as OFA Director, and )

POHNPEI STATE GOVERNMENT, )

Real Parties in Interest. )

ORDER DENYING PETITION

Ready E. Johnny  
Associate Justice

Decided: August 15, 2016

APPEARANCE:

For the Petitioner: Joseph S. Phillip, Esq.  
P.O. Box 464  
Kolonía, Pohnpei FM 96941

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HEADNOTES

Mandamus and Prohibition – Procedure

When the previous application for a writ of prohibition was denied without prejudice because of various deficiencies in the application and a second application for a writ of prohibition is filed, the court clerks will assign it the next available appellate docket number since it is a new application. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 578 (App. 2016).

Appellate Review – Stay – Civil Cases; Mandamus and Prohibition

The rules do not stay trial division proceedings while a writ of mandamus or prohibition is sought. The trial division is therefore free to act unless a stay has been specifically ordered. A writ applicant may seek a stay, first from the trial division, and if unsuccessful there, from the appellate

division. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 578 (App. 2016).

Appellate Review – Stay – Civil Cases; Mandamus and Prohibition

When no stay was ever issued (and none apparently ever sought), the trial division justice may, while a petition for a writ of prohibition to disqualify that justice is pending in the appellate division, continue to make such orders, and do all acts, not inconsistent with law or with the rules of procedure and evidence as may be necessary for the due administration of justice. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 578 (App. 2016).

Mandamus and Prohibition – Procedure; Mandamus and Prohibition – When May Issue

When membership in the Mwoalen Wahu Ileile En Pohnpei is limited to the traditional paramount chiefs of Pohnpei and the paramount chiefs are only those persons who hold the title of either Nanmwarki or Nahnken and when the justice's father, as Wasahi Sokehs, is not a paramount chief and is therefore not now a member of the plaintiff Mwoalen Wahu Ileile En Pohnpei, and, unless one day he attains the title of Nanmwarki Sokehs, will never be a member of that council, a writ of prohibition, directed to the trial justice, clearly should not be granted. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 579 (App. 2016).

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COURT'S OPINION

READY E. JOHNNY, Associate Justice:

On August 9, 2016, the Young Sun International Trading Company ("Young Sun"), filed its Second Application for a Writ of Prohibition. Its previous application for a writ of prohibition was denied without prejudice because of various deficiencies in the application. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 563 (App. 2016). Since this is a new application, the court clerks are directed to assign it the next available appellate docket number.

Young Sun seeks a writ of prohibition directed to Associate Justice Mayceleen JD Anson prohibiting her from presiding, as an FSM Supreme Court temporary justice, over FSM Supreme Court Civil Action No. 2016-014 because her father holds the traditional title of Wasahi Sokehs and is thus, in the petitioner's view, a member of the plaintiff in Civil Action No. 2016-014, the Mwoalen Wahu Ileile En Pohnpei (the Traditional Leaders Council of Paramount Chiefs of Pohnpei). Young Sun contends that since Justice Anson's father holds the high title of Wasahi Sokehs, second in rank to the Nanmwarki of Sokehs, Justice Anson's father must be a member of plaintiff Traditional Leaders Council in Civil Action No. 2016-014. Young Sun reasons that she is therefore barred from presiding over that case by 4 F.S.M.C. 124(2)(e)(i), which requires a justice to disqualify herself whenever "a person within a close relationship" to either the justice or the justice's spouse is a party to the proceeding.

Young Sun also questions whether the trial court has the authority or jurisdiction to issue orders while a writ of prohibition application is pending in the appellate division. The rules do not stay trial division proceedings while a writ of mandamus or prohibition is sought. See McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006); FSM v. Wainit, 12 FSM R. 201, 203 (Chk. 2003). The trial division is therefore free to act unless a stay has been specifically ordered. A writ applicant may seek a stay, first from the trial division, Halbert v. Manmaw, 20 FSM R. 245, 249 (App. 2015), and if unsuccessful there, from the appellate division. FSM App. R. 8(a). Since no stay was ever issued (and none apparently ever sought), the trial division justice may continue to make such "orders, and do all acts, not inconsistent with law or with the rules of procedure and evidence . . . as may be necessary for the due administration of justice." 4 F.S.M.C. 117.

Membership in the Mwoalen Wahu Ileile En Pohnpei is limited to the traditional paramount chiefs of Pohnpei. The paramount chiefs are only those persons who hold the title of either Nanmwarki or Nahnken. Justice Anson's father, as Wasahi Sokehs, is not a paramount chief and is therefore not now a member of the plaintiff Mwoalen Wahu Ileile En Pohnpei, and, unless one day he attains the title of Nanmwarki Sokehs, will never be a member of that council. Accordingly, I, as "[t]he remaining article XI, section 3 justice(s) of the Federated States of Micronesia Supreme Court, acting as the appellate division," am "of the opinion that the writ clearly should not be granted," and therefore deny the petition. FSM App. R. 21(b).

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FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA,	)	CRIMINAL CASE NO. 2000-1506
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
HENZEL AKAPITO,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM AND ORDER EXTENDING PROBATION

Dennis K. Yamase  
Chief Justice

Hearing: July 4, 2016  
Decided: July 4, 2016  
Memorandum Entered: August 25, 2016

APPEARANCES:

For the Plaintiff: Clayton M. Lawrence, Esq.  
Craig D. Reffner, Esq. (argued)  
Assistant Attorneys General  
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For the Defendant: Derensio S. Konman, Esq.  
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